

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA, )  
                                )  
Plaintiff,                 ) Case No. 1:09-cr-00290  
                                )  
v.                            ) Honorable Janet T. Neff  
                                )  
JAMES LEE MCCULLER ,      )  
                                )  
Defendant.                 )  
\_\_\_\_\_)

**REPORT AND RECOMMENDATION**

Pursuant to W.D. MICH. L.C.R.R. 11.1, I conducted a plea hearing in the captioned case on March 15, 2010, after receiving the written consent of defendant and all counsel. At the hearing, defendant James Lee McCuller entered a plea of guilty to Count 1 of the Second Superseding Indictment in exchange for the undertakings made by the government in the written plea agreement. In Count 1 of the Second Superseding Indictment, defendant is charged with conspiracy to distribute and possess with intent to distribute 5 kilograms or more of cocaine and/or 50 grams or more of crack cocaine in violation of 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(A)(ii) and (iii). On the basis of the record made at the hearing, I find that defendant is fully capable and competent to enter an informed plea; that the plea is made knowingly and with full understanding of each of the rights waived by defendant; that it is made voluntarily and free from any force,

threats, or promises, apart from the promises in the plea agreement; that the defendant understands the nature of the charge and penalties provided by law; and that the plea has a sufficient basis in fact.

I therefore recommend that defendant's plea of guilty to Count 1 of the Second Superseding Indictment be accepted, that the court adjudicate defendant guilty, and that the written plea agreement be considered for acceptance at the time of sentencing. Acceptance of the plea, adjudication of guilt, acceptance of the plea agreement, and imposition of sentence are specifically reserved for the district judge.

Date: March 15, 2010

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge

**NOTICE TO PARTIES**

You have the right to de novo review of the foregoing findings by the district judge. Any application for review must be in writing, must specify the portions of the findings or proceedings objected to, and must be filed and served no later than 14 days after the plea hearing. *See* W.D. MICH. L.C.R.R. 11.1(d).